

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

Docket No. AB 33 (Sub-No. 263X)

UNION PACIFIC RAILROAD COMPANY—ABANDONMENT EXEMPTION—IN
COOK COUNTY, IL

Decided: July 20, 2015

Union Pacific Railroad Company (UP) filed a notice of exemption under 49 C.F.R. pt. 1152 subpart F—Exempt Abandonments to abandon the Weber Industrial Lead from milepost 5.8 near Wilson Avenue, Chicago, to milepost 9.5 near Touhy Avenue, Skokie, in Cook County, Ill., a distance of 3.7 miles. Notice of the exemption was served and published in the Federal Register on November 18, 2008 (73 Fed. Reg. 68,497). The exemption became effective on December 18, 2008.

By decision and notice of interim trail use or abandonment (NITU) served on December 17, 2008, the proceeding was reopened and a 180-day period was authorized for (1) the Village of Lincolnwood, Ill., (the Village) to negotiate an interim trail use/rail banking agreement with UP for a portion of the line located in the Village of Lincolnwood, from approximately milepost 8.4 at Devon Avenue to the border with the Village of Skokie, Ill., at approximately milepost 9.45 near Touhy Avenue, a distance of approximately 1.05 miles, and (2) the City of Chicago, acting by and through its Department of Transportation (the City), to negotiate an interim trail use/rail banking agreement with UP for that portion of the line from milepost 5.8 near Wilson Avenue to the border with the Village at approximately milepost 8.4 near Devon Avenue, a distance of approximately 2.6 miles.

A number of requests to extend the NITU negotiating periods have been filed and granted, with the City filing its latest extension request on May 8, 2015, and the Village filing its latest request on May 15, 2015. On June 5, 2015, the Board extended the negotiating period for the Village's portion of the line until November 12, 2015.

On May 27, 2015, UP replied to the City's extension request stating that it is willing to extend the negotiating period for 180 days, but only for a reduced portion of the line from milepost 7.1 near Bryn Mawr Avenue to the border with the Village at approximately milepost 8.4 near Devon Avenue, a distance of approximately 1.3 miles. UP states that the remaining portion of the line from milepost 5.8 near Wilson Avenue to milepost 7.1 near Bryn Mawr Avenue has been withdrawn from the abandonment authorization and will remain a part of UP's railroad system.

Where, as here, the carrier has not consummated the abandonment at the end of the previously imposed negotiating period and is willing to continue trail use negotiations, and is willing to extend the negotiating period with the City, the Board retains jurisdiction, and the NITU negotiating period may be extended.¹ Under the circumstances, further extension of the negotiating period is warranted. See Birt v. STB, 90 F.3d 580, 588-90 (D.C. Cir. 1996); Grantwood Vill. v. Mo. Pac. R.R., 95 F.3d 654, 659 (8th Cir. 1996). An extension of the NITU negotiating period will promote the establishment of trail use and rail banking consistent with the Trails Act. Accordingly, the NITU extension request will be extended only for rail line located between milepost 7.1 and approximately milepost 8.4 for an additional 180 days, from May 16, 2015, to November 12, 2015.

This decision will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. This proceeding is reopened.
2. The City's May 8, 2015 request for a further extension of the NITU originally issued on December 17, 2008 is granted to the extent that the UP concurs in the extension, that is, for 180 days, until November 12, 2015, for the segment from milepost 7.1 to milepost 8.4, a distance of approximately 1.3 miles.
3. This decision is effective on its service date.

By the Board, Joseph H. Dettmar, Acting Director, Office of Proceedings.

¹ See Rail Abans.—Use of Rights-of-Way as Trails—Supplemental Trails Act Procedures, 4 I.C.C.2d 152, 157-58 (1987).